Supreme Court, U.S.
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In The

Supreme Court of the United States

JUAN ANTONIO MORENO-VARGAS,

Petitioner,

versus

UNITED STATES OF AMERICA,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. DOES THE PRESENCE OF "CROSS-TRAINED" DOGS AT A PERMANENT BORDER CHECKPOINT RENDER THE IMMIGRATION CHECKPOINT AN ILLEGAL NARCOTICS CHECKPOINT SINCE THE DOGS ARE TRAINED TO REACT TO BOTH PERSONS AND NARCOTICS?

CERTIFICATE OF INTERESTED PERSONS

The undersigned counsel of record for **JUAN ANTONIO MORENO-VARGAS** certifies that this is a criminal case and that the persons having an interest in the outcome of this case are the Appellee, the United States of America and the following:

JUDGE:

Honorable United States Judge Hayden W. Head, Jr.
U.S. District Court for the Southern District of Texas
United States Courthouse
1133 Shoreline Blvd.
Corpus Christi, Texas 78401

APPELLANT:

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CERTIFICATE OF INTERESTED PERSONS – Continued

These representations are made in order that Judges of this Honorable Court may evaluate possible disqualification or recusal pursuant to Local Rule 28.2.1.

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PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The Petitioner respectfully prays that a Writ of Certiorari issue to review the final decision of the Federal Fifth Circuit Court of Appeals in this case. The Opinion was issued on December 18, 2002 and no motion for rehearing was filed.

OPINIONS BELOW

The Federal District Court in Corpus Christi, Texas heard a Motion to Suppress on January 24, 2002. After the hearing, the trial court denied the suppression motion on the same day. On March 21, 2002, the trial court filed a *MEMORANDUM OPINION ON DENIAL OF MOTION TO SUPPRESS*. (Appendix 5-9) After a trial before the Court on mostly stipulated evidence to preserve the issue for appeal, the trial court convicted the Petitioner. (Appendix 10-20, 21) The Petitioner timely gave notice of appeal to the Fifth Circuit Court of Appeals. On December 18, 2002, the Fifth Circuit Court of Appeals affirmed his conviction. (Appendix 1-4)

JURISDICTION

This Honorable Court has jurisdiction to review a final decision of a court of appeals in which a decision could be had pursuant to 28 U.S.C. §1254, 28 U.S.C. §1257, 28 U.S.C. §2101, and 28 U.S.C. §2104.

STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the Constitution of the United States of America, which reads as follows:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fifth Amendment to the Constitution of the United States of America, which reads as follows:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

The Sixth Amendment to the Constitution of the United States of America, which reads as follows:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him to have compulsory process

for obtaining witness in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below.

The Petitioner Mr. Juan Moreno-Vargas was indicted for possession of approximately 17 kilograms of Cocaine. (Appendix 22) The controlled substance was found as a result of a search at the Sarita, Texas Border Patrol Checkpoint on November 13, 2001. (Appendix 5)

A Motion to Suppress was timely filed and was heard by the trial court on January 24, 2002. The trial court denied the Motion to Suppress on the same day. (SEE Appendix 5-9) On March 21, 2002 the trial court filed a *MEMORANDUM OPINION ON DENIAL OF MOTION TO SUPPRESS*. (Appendix 5-9) After a trial before the Court, the Petitioner was convicted. After a proper sentencing hearing, Petitioner Mr. Juan Moreno-Vargas was sentenced to 121 months confinement and five years supervised release and a $1,000.00 fine. (Appendix 10-20) Petitioner Mr. Juan Moreno-Vargas appealed the denial of the Motion to Suppress to the Fifth Circuit Court of Appeals which affirmed his conviction and sentence on December 18, 2002.

B. Statement of Facts.

This case occurred at the Sarita Checkpoint. (R., Vol. 2, p. 18) This is an immigration checkpoint approximately 14.4 miles from the Mexican border. (R., Vol. 2, p. 18) The

officers at the checkpoint are trained to look for immigration violations and they are also trained to look for drugs. (R., Vol. 2, p. 22-23, 24) Dogs trained to search for people and drugs are used at the Primary stop area to sniff out the vehicles while the agents question the people if they are United States Citizens. (R., Vol. 2, p. 21, 25) One of the reasons for having the dogs at the Primary is to search for people and drugs. (R., Vol. 2, p. 26) Juan Antonio Moreno-Vargas drove his motor vehicle to the Sarita Checkpoint on November 13, 2001. (R., Vol. 2, p. 34) Melissa N. Lucio worked the Primary Lane on that particular day as Petitioner Juan Antonio Moreno-Vargas drove into the Checkpoint. (R., Vol. 2, p. 34-35) Lucio noticed that Mr. Moreno-Vargas was clenching the steering wheel quite tight. (R., Vol. 2, p. 35) When asked about his immigration status, he immediately told the officer that he was a resident alien. He presented his card when requested. (R., Vol. 2, p. 35-36) Mr. Moreno-Vargas showed his card but held onto it. (R., Vol. 2, p. 35-36) When she asked him to release the card, he did so. (R., Vol. 2, p. 42) It is not standard procedure to ask for the resident alien card, it all depends on the situation. (R., Vol. 2, p. 39, lines 13-24) After she looked at the card, she did not see anything unusual and handed the card back to him. (R., Vol. 2, p. 43) She asked no further immigration questions after handing the card back to Mr. Moreno-Vargas. (R., Vol. 2, p. 43) The K-9, Bodie, was used on the vehicle while Mr. Vargas was stopped for the immigration check. (R., Vol. 2, p. 36) She does not remember how, but somehow the dog handler indicated that Mr. Moreno-Vargas should be sent to the Secondary detention area. (R., Vol. 2, p. 36) Jorge De La Rosa, a Border Patrol agent, "also have a – collateral duties, K-9 handler." (R., Vol. 2, p. 46) He went through K-9 training with his dog as team. (R., Vol. 2, p. 48) After the

twelve weeks of training, six weeks for the trainer and then six weeks for the dog, they go through annual training and re-certification. (R., Vol. 2, p. 48) First the dog is trained to locate hidden humans and then he is trained to detect the odors of marijuana, cocaine, heroine, methamphetamine, and any of the derivatives of those items. (R., Vol. 2, p. 49) When the dogs and handlers arrive on duty, 90% of the time they are assigned to the Checkpoint. (R., Vol. 2, p. 49) De La Rosa testified that the primary purpose of the K-9's was to find concealed humans, and secondarily to search for narcotics. (R., Vol. 2, p. 50, 58) Once Mr. Moreno-Vargas was sent to the Secondary search area, the dog was put into the car and it alerted to the glove compartment. (R., Vol. 2, p. 53) The dog is cross-trained to look for humans and narcotics. (R., Vol. 2, p. 57-58) The dog alerts to humans and controlled substances the exact same way. (R., Vol. 2, p. 59) There are plenty of times when the dog alerts and nothing is found. (R., Vol. 2, p. 59-60) Mr. Moreno-Vargas, the Appellant, was not free to leave until the search was completed. (R., Vol. 2, p. 65) On looking up at the glove compartment area, Officer De La Rosa saw a covering about 8 ½ by 11 inches. (R., Vol. 2, p. 67) He was not looking for people at that time. (R., Vol. 2, p. 67-68) He testified that "I didn't conceivably believe there might be anyone hidden there." (R., Vol. 2, p. 68)

REASONS FOR GRANTING THE WRIT

There are special and important reasons for granting the writ. This Honorable Court should grant certiorari because this case involves an important interpretation of Fourth Amendment law. It is well established that a fixed checkpoint set up to allow officers to search for drugs is an

illegal violation of the Fourth Amendment. *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). Although this Honorable Court authorized immigration checkpoints due to the limited intrusion created by the simple questions being asked regarding a person's right to be in the United States, this Court also limited the scope of even this intrusion into the traveler's privacy. *United States v. Martinez-Fuerte*, 428 U.S. 543, 565; 96 S.Ct. 3074; 49 L.Ed.2d 1116 (1976). This Court limited the referral to secondary checkpoints for brief questioning finding the intrusions were constitutionally minimal when limited to brief questions. As the Court noted, the principal protections of the Fourth Amendment lie in the appropriate limitations on the scope of these border checkpoint stops. 428 U.S. at 543. The Border Patrol has expanded the scope of these checkpoints to unconstitutional limits when they introduced search dogs specially trained to alert to the presence of controlled substances in the vehicles traveling through the Checkpoints. The decision of the Border Patrol to circumvent this Court's ruling in *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) by training the search dogs to alert when either a hidden alien or drugs are detected by the specially trained dogs. This Court should grant certiorari in order to determine the constitutional validity of using the Border Checkpoints to search for hidden aliens as is permitted by *United States v. Martinez-Fuerte*, 428 U.S. 543, 565; 96 S.Ct. 3074; 49 L.Ed.2d 1116 (1976) and for drugs as is impermissible under *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000).

I. DOES THE USE OF "CROSS-TRAINED" DOGS AT A PERMANENT BORDER CHECKPOINT RENDER THE IMMIGRATION CHECKPOINT AN ILLEGAL NARCOTICS CHECKPOINT SINCE THE DOGS ARE TRAINED TO REACT TO BOTH PERSONS AND NARCOTICS?

This Honorable Court has not addressed this concept of whether a dual purpose checkpoint which includes a general search of vehicles traveling through the checkpoint for drugs and hidden aliens is constitutional. Since the Fourth Amendment holds that "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized," that protection should not be diluted simply because there may be dual valid reason for the intrusion. Fourth Amendment To The Constitution Of The United States. Suspicionless stops at checkpoints to interdict drugs are clearly unconstitutional. *United States v. Machuca-Barrera*, 261 F.3d 425 (5th Cir., 2001). How can the checkpoint to interdict drugs which is unconstitutional be metamorphosed into legitimacy by not letting the officers who are utilizing the dogs know if the dog is alerting to hidden aliens or drugs? This Honorable Court in *United States v. Martinez-Fuerte*, 428 U.S. 543, 96 S.Ct. 3074, 49 L.Ed.2d 1116 (1976) authorized the immigration checkpoints because of the limited intrusion created by the simple questions regarding a person's right to be in the United States. Supra, at 565. The Court went on to note that the referrals to secondary checkpoints for brief questioning were minimal when limited to

questions involving citizenship or proper alien status. As the Court noted, the principal protections of the Fourth Amendment rights lie in the appropriate limitations on the scope of these border checkpoint stops. 428 U.S. at 543. By cross-training the dogs, the Border Patrol has increased the scope and intrusion. As the dog handler in this case noted there are plenty of times when the dog alerts and nothing is found. (R., Vol. 2, p. 59-60) This shows that not only does the dual purpose dog cause unwarranted intrusion into the privacy and violation of the right of citizens to be left alone, but also is plenty of times ineffective and the intrusion unnecessary. Since plenty of times nothing is found, the dog alert is nothing more than a mere suspicion that there may be either drugs or a hidden alien somewhere to be found. If searches are allowed plenty of times without any illegal conduct, then plenty of times citizens are unlawfully deprived of their right to be left alone. The validity for an immigration checkpoint rests in 8 U.S.C. §§1357(a)(1), (a)(3). This statute allows border agents the right to interrogate individuals regarding their citizenship status and regarding their right to be in the United States but not whether they have drugs. The statute obviously does not grant authority to check for drugs because this Court has already clearly established that checkpoints for the interdiction of illegal drugs are illegal. *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000). The checkpoint at the Sarita station has been transformed from an immigration checkpoint to a drug checkpoint by the intrusion of the drug dogs. The stop and detention for the drug search was illegal ab initio. The drug dogs transform the legal immigration checkpoint into an illegal drug interdiction checkpoint. The Fourth Amendment applies to all seizures of the person, including

seizures that involve only a brief detention short of traditional arrest. *United States v. Brignoni-Ponce*, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). As regards roving patrol stops, this Court held that "We are unwilling to let the Border Patrol dispense entirely with the requirement that officers must have a reasonable suspicion to justify roving-patrol stops." *United States v. Brignoni-Ponce*, supra at 882.

The Fifth Circuit has held, in applying established Supreme Court precedent, that when a vehicle was legitimately stopped at an immigration checkpoint and an officer tapped the side of a propane tank, the officers still needed probable cause to search the propane tank. *United States v. Muniz-Melchor*,[2] 894 F.2d 1430 (5th Cir., 1990) Judge Wiener's dissent in *United States v. Zapata-Ibarra*, 223 F.3d 281 (5th Cir., 2000) is most exceptionally valid and cogent when the Government makes the argument that they are not looking for drugs at Immigration Checkpoints when ninety percent of the time they have present at this Checkpoints dogs specifically trained, as well as handlers specifically trained, to search for drugs. As Justice Wiener noted "To borrow from Justice Scalia, I sense that history is likely to judge the judiciary's evisceration of the Fourth Amendment in the vicinity of the Mexican border as yet another jurisprudential nadir, joining *Korematsu*, *Dred Scott*, and even *Plessy* on the list of our most shameful failures to discharge our duty of defending constitutional civil liberties against the popular hue and cry that would have us abridge them." This

[2] The holding of the Court that pressing and feeling luggage is not a search was subsequently found erroneous by the Supreme Court.

Honorable Court should grant certiorari in order to determine if the protection of the Constitution ends 50 miles short of the border or whether all citizens regardless of their geographic location **within this country** enjoy the same rights and privileges as all other residents.

The evidence in this case demonstrates that the Border Checkpoints are now being used as dual purpose checkpoints for both drugs and to check for illegal immigration. There is no question at this juncture that the Checkpoints are being used in violation of this Court's ruling in *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) to search for illegal narcotics. The Fourth Amendment was a primary protection believed in and cherished by the founders of this Country. This Court has said that drug checkpoints are illegal. The presently practiced activity is illegal. Saying that the primary purpose is legal does not make the illegal secondary purpose alright. Illegal is illegal. Drug interdiction at checkpoints cannot pass constitutional muster.

This Honorable Court should grant certiorari in this cause in order to determine if the present circumvention of this Court's ruling that drug interdiction checkpoints are illegal can continue. This Court should uphold the integrity of the justice system and the integrity of the Fourth Amendment and suppress this search based upon the illegal "secondary" activity of the Checkpoint searchers.

Petitioner Mr. Juan Antonio Moreno-Vargas should have this issue reviewed for constitutional error.

CONCLUSION AND PRAYER

Accordingly, Petitioner Juan Moreno-Vargas respectfully prays that the petition for certiorari to the Fifth Circuit Court of Appeals sitting in New Orleans, Louisiana issue herein and for such other and further relief to which he may be justly entitled.

Respectfully submitted,

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IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 02-40688
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUAN ANTONIO MORENO-VARGAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Southern District of Texas

(Filed Dec. 18, 2002)

Before GARWOOD, JOLLY, and SMITH, Circuit Judges.

GARWOOD, Circuit Judge:

Juan Antonio Moreno-Vargas appeals his conviction for possession of cocaine with intent to distribute. Moreno contends that the district court erred in denying his motion to suppress evidence seized from his vehicle at the Sarita immigration checkpoint. Citing *City of Indianapolis v. Edmond*, 531 U.S. 32, 121 S.Ct. 447 (2000), Moreno contends that his detention at the checkpoint was illegal at its inception because the checkpoint has a secondary programmatic purpose of drug interdiction, as evidenced

by the permanent presence of dogs cross-trained to detect drugs as well as humans (the alert of the dogs being the same on detection of either). This argument is without merit.

Moreno does not dispute that, as the district court found (on the basis of ample, and virtually undisputed, evidence), the Sarita checkpoint has as its *primary* programmatic purpose the enforcement of the immigration laws. *Edmond* requires no more.

Edmond states "[o]ur holding also does not impair the ability of police officers to act appropriately upon information that they properly learn during a checkpoint stop justified by a lawful *primary* purpose, even where such action may result in the arrest of a motorist for an offense unrelated to that purpose." *Id.*, 121 S.Ct. at 457 (emphasis added).[1] In *United States v. Machuca-Barrera*, 261 F.3d 425 (5th Cir. 2001), we held that "checkpoints with the *primary* purpose of identifying illegal immigrants are constitutional," *id.* at 431 (emphasis added), that in such a case "[i]t is the length of the detention, not the questions asked, that makes a specific stop unreasonable," *id.* at

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[1] *See also id.*, 121 S.Ct. at 456 n.1:

" . . . our judgment turns on the fact that *the primary* purpose of the Indianapolis checkpoints is to advance the general interest in crime control. THE CHIEF JUSTICE's dissent also erroneously characterizes our opinion as holding that the 'use of a drug-sniffing dog . . . annuls what is otherwise plainly constitutional under our Fourth Amendment jurisprudence.' *Post*, at 458. Again, the constitutional defect of the program is that its *primary* purpose is to advance the general interest in crime control." (emphasis added).

432, and that where "the *primary* purpose of the . . . checkpoint is to investigate immigration status . . . we face *only* the question of whether the suspicionless [checkpoint] stop . . . was sufficiently limited in duration to pass constitutional muster." *Id.* at 434-35 (emphasis added). In that case, we upheld the search despite the fact that the Border Patrol Agent at the checkpoint had asked the defendant about drugs, because the questioning was "within the permissible duration of an immigration checkpoint stop." *Id.* at 435. We are aware that in its footnote 2 *Edmond* states "we need not decide whether the State may establish a checkpoint program with the primary purpose of checking licenses or driver sobriety and a secondary purpose of interdicting cocaine." *Id.*, 121 S.Ct. at 457 n.2. However, we agree with the D.C. Circuit that this "footnote seems divorced from the rest of the opinion" and that, as indicated in other passages of *Edmond* above cited, a checkpoint is constitutional if its *primary* purpose is lawful. *United States v. Davis,* 270 F.3d 977, 979 (D.C. Cir. 2001). That is likewise the necessary inference of our *Machuca-Barrera* holding discussed above. Further, we cited *Davis* with approval in *United States v. Green,* 293 F.3d 855, 859 (5th Cir. 2002), in respect to determining "the primary purpose of a checkpoint."

The Sarita checkpoint, where Moreno was stopped, is and has been for over twenty-five years an established fixed immigration checkpoint operated by the Border Patrol, the validity of which was sustained in *United States v. Martinez-Fuerte,* 96 S.Ct. 3075, 3079, 3087 (1976), affirming *United States v. Sifuentes,* 512 F.2d 1402 (5th Cir. 1975) (table). We have long sustained such stops at this checkpoint, including those where drugs were discovered (within the scope of the immigration inquiry).

See, e.g., United States v. Rojas, 538 F.2d 670 (5th Cir. 1976); *United States v. Medina,* 543 F.2d 553 (5th Cir. 1976). Moreno does not argue, and did not argue below, that the Sarita checkpoint would not be maintained were it not for the fact that the immigration stops there often result in interdiction of drugs, nor would the evidence support any such finding, and the district court implicitly found to the contrary.

We accordingly hold that Moreno's immigration stop at the Sarita checkpoint was valid because the checkpoint has as its primary programmatic purpose the enforcement of the immigration laws, regardless of whether or not it could also be said to have a secondary programmatic purpose of drug interdiction.[2]

In the instant case, a dog alerted to Moreno's vehicle at the primary inspection area, while a border patrol agent was questioning Moreno about his citizenship (the dog was then outside of the vehicle and no entry into it had been made). Thus, the agent had a reasonable suspicion before she had finished verifying Moreno's citizenship and the presence of the dog did not affect the duration of the stop.

The judgment is

AFFIRMED.

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[2] The district court made no finding as to whether or not there was any such secondary programmatic purpose.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	CR. NO. C-01-366-1
v.	§	
	§	
JUAN MORENO-VARGAS	§	

MEMORANDUM OPINION ON DENIAL OF MOTION TO SUPPRESS

On January 24, 2002, this Court denied the defendant's motion to suppress evidence seized as a result of a search at the United States Border Patrol Checkpoint in Sarita, Texas, on November 13, 2001. The reasons for that denial were stated on the record during the January 24, 2002, hearing but are set out in more detail below.

Defendant claims that he was subjected to an illegal stop, search and seizure at the Sarita checkpoint on November 13, 2001, which resulted in his prosecution for possession with intent to distribute approximately 17 kilograms of cocaine in violation of 21 U.S.C. §841(a)(1) and (b)(1)(A). He claims that he was stopped at the checkpoint without suspicion and for the purpose of interdicting drugs and that the search exceeded the authorized scope. He contends that the Sarita checkpoint has been transformed from a constitutional immigration checkpoint to an unconstitutional drug checkpoint because canines trained to detect drugs as well as hidden aliens are used at the checkpoint. See *City of Indianapolis v. Edmond*, 121 S.Ct. 447 (2000) and *United States v. Machuca-Barrera*, 261 F.3d 425 (5th Cir. 2001).

Legal Authority

In *United States v. Martinez-Fuerte*, 96 S.Ct. 3074 (1976), the Supreme Court held that stops for brief questioning routinely conducted at permanent checkpoints are consistent with the Fourth Amendment and do not require a warrant. Furthermore, in *Martinez-Fuerte*, the Supreme Court found the checkpoint near Sarita, Texas, to be a valid immigration checkpoint. *Id.* The Fifth Circuit has upheld suspicionless stops at the Sarita checkpoint for over twenty-five years. See, e.g., *United States v. Rojas*, 538 F.2d 670 (5th Cir. 1976) (per curiam).

Immigration checkpoint stops are justified not by reasonable suspicion of particular individuals but by the legitimate programmatic purpose of "determining the citizenship status of persons passing through the checkpoint." *Machuca-Barrera* at 433. Border patrol agents may also refer motorists to the secondary inspection area without individualized suspicion, as such an intrusion "is sufficiently minimal that no particularized reason need exist to justify it." See *Martinez-Fuerte* at 3085; *Machuca-Barrera* at 434. A stop may last as long as "reasonably necessary to determine the citizenship status of the persons stopped," including the time necessary to inquire about citizenship status and to request identification or other proof of citizenship. *Machuca-Barrera* at 433.

However, when agents properly learn information "during a checkpoint stop justified by a lawful primary purpose" such as immigration inspection, they are free to act appropriately on that information "even where such action may result in the arrest of a motorist for an offense unrelated to that purpose." *City of Indianapolis* at 457-458. Thus, while the length of the detention is generally

limited by the immigration-related justification, a stop may be lengthened to investigate non-immigration matters "if the initial, lawful stop creates reasonable suspicion warranting further investigation." *Machuca-Barrera* at 434. Searches may be conducted with consent or probable cause. *Id.*

If it does not lengthen the immigration stop, border patrol agents may utilize canines trained to detect drugs at the checkpoint. *Machuca-Barrera* at 432 n.21. "[A] dog sniff does not constitute a search or seizure under the Fourth Amendment." *United States v. Dortch*, 199 F.3d 193, 197 (5th Cir. 1999). Once a dog alerts to an individual's car, there is probable cause to search the car. *Dortch* at 197.

Findings of Fact and Conclusion of Law

The Court finds that the primary purpose of the Sarita checkpoint continues to be "determining the citizenship status of persons passing through the checkpoint." The facility is manned and operated by border patrol agents whose sworn purpose is detection of illegal immigration and who are trained on that matter. The Court further finds that the defendant was stopped at the checkpoint on November 13, 2001, so that Border Patrol Agent Lucio could determine his citizenship status. The programmatic purpose of the checkpoint, not individualized suspicion, justified this stop.

During the stop in the primary inspection area, the defendant was hesitant in revealing his alien identification card to Agent Lucio as she requested. The Court finds that the immigration-related justification for continued detention had not yet ceased when the defendant was

directed to the secondary inspection area, as Lucio had not yet become satisfied as [sic] the defendant's citizenship status.

In addition, as the defendant drove into the checkpoint perimeters and again while defendant was stopped in the primary inspection area, trained canine Bodie alerted to the defendant's vehicle. The dog sniffs, which were not searches, did not impermissibly extend defendant's detention at the checkpoint because they were performed before and during the initial, lawful stop. Because the dog had alerted to the defendant's vehicle, the Court finds that there was reasonable suspicion warranting further investigation in the secondary inspection area, if not probable cause to search the car.

In any event, the Court finds that there was probable cause to search the defendant's car once Bodie alerted to or indicated the front left dashboard region of the defendant's care in the secondary inspection area. For these reasons, the subsequent search and seizure were constitutional and the evidence seized at the Sarita checkpoint on November 13, 2001, is admissible.

The defendant's real contention is that the dogs used at immigration checkpoints should not be cross-trained to alert to drugs as well as human contraband. There is no support for this in the law. If a border patrol officer, trained on the job if not formally, sees and recognizes drugs in plain view or recognizes the smell of a drug emanating from a vehicle during an immigration checkpoint stop, the officer can act on that information. See, e.g., *United States v. Hernandez*, 976 F.2d 929 (5th Cir. 1992) (per curiam); *United States v. Presas*, 543 F.2d 552 (5th Cir. 1976) (per curiam). In fact, the sight or smell of

drugs in a vehicle gives rise to probable cause to search that vehicle. *Id.* Similarly, if a canine trained to recognize the odor of drugs or human contraband alerts to a vehicle to indicate such odor recognition to his human handler, border patrol officers may act on that information and there is probable cause to search that vehicle. See *Dortch* at 179. If a canine sniff for drugs or aliens is not a search which violates the Fourth Amendment, and if the information provided by a canine alert – that either drugs or aliens appear to be in the vehicle – can supply probable cause for a search, it would be nonsensical to conclude that it is unconstitutional to train canines to perform such sniffs and to alert when they find contraband.

For the foregoing reasons as well as those stated on the record, defendant's motion to suppress is denied.

ORDERED this 21 day of March, 2002.

/s/ H.W. Head, Jr.
H.W. HEAD, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
Southern District of Texas
Holding Session in Corpus Christi

UNITED STATES OF AMERICA

v.

JUAN ANTONIO MORENO-VARGAS

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: **2:01CR00366-001**

☐ See Additional Aliases sheet. Danny Burns
Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) which was accepted by the court. _____

☒ was found guilty on count(s) One on February 4, 2002 in a bench trial

ACCORDINGLY, the court has adjudicated that the defendant is guilty of the following offenses:

Title & Section	Nature of Offense	Date Offense Concluded	Count Number(s)
21 U.S.C. § 841(a)(1) and (b)(1)(A)	Possession with Intent to Distribute 14.96 Kilograms of Cocaine	November 13, 2001	1

☐ See Additional Counts of Conviction

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States

IT IS ORDERED that the defendant shall notify the United States Attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

Defendant's Soc. Sec. No.:
627-44-4232

Defendant's Date of Birth:
04/03/1965

Defendant's USM No.:
98468-079

Defendant's Residence Address:
3525 Villa Del Ray
Brownsville, Texas 78521

Defendant's Mailing Address:
3525 Villa Del Ray
Brownsville, Texas 78521

GAR

April 24, 2002
Date of Imposition of Judgment

/s/ H.W. Head, Jr.
Signature of Judicial Officer

HAYDEN W. HEAD JR.
UNITED STATES DISTRICT JUDGE
Name and Title of Judicial Officer

4/29/02
Date

IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a total term of 121 months.

☐ See Additional Imprisonment Terms.

☐ The court makes the following recommendations to the Bureau of Prisons:

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

- ☐ at _____ on _____.
- ☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

- ☐ before 2 pm on _____
- ☐ as notified by the United States Marshal.
- ☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

_____

_____

_____

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

_____
UNITED STATES MARSHAL

By_____
DEPUTY UNITED STATES
MARSHAL

SUPERVISED RELEASE

Upon release from imprisonment, the defendant shall be on supervised release for a term of 5 years.

☐ See Additional Supervised Released Terms Sheet.

The defendant shall report to the probation officer in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.

The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

For offenses committed on or after September 13, 1994:

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

☒ The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

☐ See Additional Mandatory Conditions Sheet

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in the Criminal Monetary Penalties sheet of this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court (set forth below). The defendant shall also comply with the additional conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

☒ See Special Conditions of Supervision.

1) the defendant shall not leave the judicial district without the permission of the court or probation officer;

2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;

3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;

4) the defendant shall support his or her dependents and meet other family responsibilities;

5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;

6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;

7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;

8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;

9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;

10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;

11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;

12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;

13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm

the defendant's compliance with such notification requirement.

SPECIAL CONDITIONS OF SUPERVISION

DEPORTATION: If deported, the defendant is not to reenter the United States illegally. If the defendant is deported during the period of probation or the supervised release term, supervision by the probation office becomes inactive. If the defendant returns, the defendant shall report to the nearest U.S. Probation Office immediately. Supervision by the probation officer reactivates automatically upon the defendant's reporting.

CRIMINAL MONETARY PENALTIES

The defendant shall pay the following criminal monetary penalties in accordance with the schedule of payments set forth on Sheet 5, Part B.

	Assessments	Fine	Restitution
TOTALS	$100.00	$1,000.00	$

☐ See Additional Terms for Criminal Monetary Penalties Sheet.

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO245C) will be entered after such determination.

☐ The defendant shall make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However,

pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid in full prior to the United States receiving payment.

Name of Payee	*Total Amount of Loss	Amount of Restitution Ordered	Priority Order or Percentage of Payment
☐ See Additional Restitution Payees Sheet.			
TOTALS	**$0.00**	**$0.00**	

☐ If applicable, restitution amount ordered pursuant to plea agreement $_____

☐ The defendant shall pay interest on any fine or restitution of more than $2,500, unless the fine or restitution is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 5, Part B may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest, and it is ordered that:

☐ the interest requirement is waived for the
☒ fine and/or ☐ restitution.

☐ the interest requirement for the
☐ fine and/or ☐ restitution is modified as follows:

---

* Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18, United States Code, for offenses committed on or after September 13, 1994 but before April 23, 1996.

☐ Based on the Government's motion, the Court finds that reasonable efforts to collect the special assessment are not likely to be effective. Therefore, the assessment is hereby remitted.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties shall be due as follows:

A ☐ Lump sum payment of $_____ due immediately, balance due

☐ not later than _____, and/or

☐ in accordance with ☐ C, ☐ D, and/or E below; or

B ☒ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☒ E below); or

C ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in _____ (e.g., equal, weekly, monthly, quarterly) installments of $_____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☒ Special instructions regarding the payment of criminal monetary penalties:

Make all payments payable to: U.S. District Clerk, 1133 N Shoreline Blvd Ste 208, Corpus Christi, TX 78401

Payment of the fine is to be made at a rate of $300.00 per year during the first three (3) years of supervised release with a $100.00 payment to be made during the fourth year of supervised release.

Unless the court has expressly ordered otherwise in a special instruction above, if this judgment imposes a period of imprisonment, payment of criminal monetary penalties shall be due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court, unless otherwise directed by the court, the probation officer, or the United States attorney

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number (Including Defendant Number)	Defendant Name	Joint and Several Amount

☐ See Additional Defendants Held Joint and Several sheet.

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

☐ See Additional Forfeited Property Sheet.

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) community restitution, (6) fine interest, (7) penalties, and (8) costs, including cost of prosecution and court costs.

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
V.	§	CR. NO. C-01-366
	§	
JUAN ANTONIO MORENO-VARGAS	§	
	§	

VERDICT OF THE COURT

Upon waiver by the defendant of trial by jury, the Court convened a trial. The Court heard the evidence and arguments of counsel. The Court finds beyond a reasonable doubt, as alleged, that: (1) the defendant knowingly and intentionally possessed a controlled substance on November 13, 2001, in the Corpus Christi Division of the Southern District of Texas; (2) the substance was in fact cocaine; (3) the defendant possessed the substance with the intent to distribute it; and (4) the quantity of the substance was more than five kilograms, that is, approximately seventeen (17) kilograms.

Based on its findings, the Court enters a verdict of guilty.

ORDERED this 4 day of February, 2002.

/s/ H.W. Head, Jr.
H. W. HEAD, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
CORPUS CHRISTI DIVISION

UNITED STATES OF AMERICA	§	
	§	CRIMINAL NO.
V.	§	C-01-366
	§	
JUAN ANTONIO MORENO-VARGAS	§	
	§	

INDICTMENT

(Filed Dec. 12, 2001)

THE GRAND JURY CHARGES THAT:

COUNT ONE

On or about November 13, 2001, in the Corpus Christi Division of the Southern District of Texas and elsewhere within the jurisdiction of the Court, the defendant,

JUAN ANTONIO MORENO-VARGAS,

did knowingly and intentionally possess with intent to distribute a controlled substance, that is more than five (5) kilograms of amount of cocaine, to-wit: approximately seventeen (17) kilograms of cocaine, a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(A).

A TRUE BILL:

/s/ Janet M. Hernandez
FOREPERSON OF THE
GRAND JURY

GREGORY A. SERRES
UNITED STATES ATTORNEY

By: /s/ Elsa Salinas-Patterson
ELSA SALINAS-PATTERSON
Assistant United States Attorney